Barbara Cope, a Sole Proprietor, d/b/a M.C. Delta Contracting, Michael Cope, a Sole Proprietor, d/b/a AB Company and AAR Construction, and d/b/a Gerald Michael Contracting, Inc., alter egos and a single employer *and* Local 1076, Laborers' International Union of North America, AFL–CIO. Case 7–CA–33973

December 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Upon a charge and amended charge filed by the Union on December 2, 1992, and January 14, 1993, the General Counsel of the National Labor Relations Board issued an amended complaint (complaint) on February 26, 1993, against Barbara Cope, a Sole Proprietor, d/b/a M.C. Delta Contracting (MC), Michael Cope, a Sole Proprietor, d/b/a AB Company (AB) and AAR Construction (AAR), and d/b/a Gerald Michael Contracting, Inc. (GMC), alter egos and a single employer, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

Thereafter, on September 30, 1993, the Regional Director for Region 7 approved a settlement agreement in the proceeding. The settlement provided that ''(a)pproval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response.''

Following approval of the settlement agreement, the Regional Director determined that the Respondent had failed to comply fully with the terms of the settlement agreement despite several requests by the Region to do so. On September 5, 1996, the Regional Director therefore issued and served on the Respondent an order setting aside settlement agreement and reissuing amended complaint. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On November 27, 1996, the General Counsel filed a Motion for Default Summary Judgment with the Board. On December 2, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Region, by letter dated September 30, 1996, notified the Respondent that unless an answer were received by October 14, 1996, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent MC, Respondent AB, Respondent AAR, and Respondent GMC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have worked together on jobsites; and have held themselves out to the public as a single-integrated business enterprise. Based on these operations, Respondents MC, AB, AAR, and GMC (the Respondent) constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

At all material times, AB, AAR, and GMC have been operated as a disguised continuation of MC, and AB, AAR, GMC, and MC are, and have been, alter egos within the meaning of the Act.

At all material times the Respondent, with an office and place of business in Clarkston, Michigan, has been engaged in demolition work in the construction industry. During the 1992 calendar year, the Respondent provided services valued in excess of $50,000 to JDS Piping Company, an enterprise within the State of Michigan, which during the same period purchased and received at its Michigan facilities goods valued in excess of $50,000 directly from points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

All employees of the Respondent performing laborers work, but excluding guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

About June 15, 1992, the Respondent, an employer engaged in the building and construction industry, granted recognition to Local 1076, Laborers' International Union of North America, AFL–CIO, as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement which by its terms had expired on June 1, 1992, and which had been extended day to day pending negotiations of a successor collective-bargaining agreement, and by entering into an interim and supplemental agreement with the Union which by its terms provided that the Respondent agreed to be bound by the terms of a successor collective-bargaining agreement to be negotiated, retroactive to June 1, 1992, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9(a) of the Act. The successor collective-bargaining agreement, effective June 1, 1992, to June 1, 1994, was entered into about July 22, 1992. At all times since June 15, 1992, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

The foregoing collective-bargaining agreements provide, inter alia, for the payment of certain contractual wage rates to unit employees and for the monthly payment by the Respondent of moneys into fringe benefit funds established for the benefit of unit employees of the Respondent. Since about June 15, 1992, the Respondent has failed and refused to pay unit employees contractual wage rates and, since about July 1, 1992, has failed and refused to submit monthly payments into the fringe benefits funds for its unit employees.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to pay unit employees contractually required wage rates since June 15, 1992, we shall order the Respondent to make whole its unit employees for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the fringe benefit funds since July 1, 1992, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[1]

ORDER

The National Labor Relations Board orders that the Respondent, Barbara Cope, a Sole Proprietor, d/b/a M.C. Delta Contracting, Michael Cope, a Sole Proprietor, d/b/a AB Company and AAR Construction, and d/b/a Gerald Michael Contracting, Inc., alter egos and a single employer, Clarkston, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain with Local 1076, Laborers' International Union of North America, AFL–CIO as the limited exclusive collective-bargaining representative of the following unit employees by failing and refusing to pay its unit employees contractual wage rates or to submit contractually required monthly payments into the fringe benefits funds for its unit employees:

> All employees of the Respondent performing laborers work, but excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(a) Make whole its unit employees by paying them for any loss of earnings attributable to its failure to pay contractual wage rates since June 15, 1992, and by making all contractually required delinquent contributions to the fringe benefit funds which it failed to make since July 1, 1992, in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Clarkston, Michigan, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 2, 1992.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain with Local 1076, Laborers' International Union of North America, AFL–CIO as the limited exclusive collective-bargaining representative of the following unit employees by failing and refusing to pay our unit employees contractual wage rates or to submit contractually required monthly payments into the fringe benefits funds for them.

> All employees of the Employer performing laborers work, but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by paying them for any loss of earnings attributable to our failure to pay contractual wage rates since June 15, 1992, and by making all contractually required delinquent contributions to the fringe benefit funds which we failed to make since July 1, 1992, with interest.

BARBARA COPE, A SOLE PROPRIETOR, D/B/A M.C. DELTA CONTRACTING, MICHAEL COPE, A SOLE PROPRIETOR, D/B/A AB COMPANY AND AAR CONSTRUCTION, AND D/B/A GERALD MICHAEL CONTRACTING, INC., ALTER EGOS AND A SINGLE EMPLOYER